

## **MINUTES OF THE LAKE COUNTY PLANNING COMMISSION**

April 26, 2006

The Lake County Planning Commission hereby finds and determines that all formal actions were taken in an open meeting of this Planning Commission and that all the deliberations of the Planning Commission and its committees, if any, which resulted in formal actions, were taken in meetings open to the public in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Chairman Brotzman called the meeting to order at 7:00 p.m.

### **ROLL CALL**

The following members were present: Messrs. Adams, Brotzman, Franz (Alt. for Schaedlich), Siegel, Simon, Sines and Mmes. Hausch and Pesec. Staff present: Messrs. Webster, Boyd and Ms. Myers.

### **MINUTES**

Corrections to the March 28, 2006 public hearing and regular meeting minutes were submitted as follows:

- Public Hearing – Page 2, third paragraph. Change “cab” to “can”.
- Regular Meeting:
  1. Page 4, Roll Call. Mr. Morse’s name was misspelled and is to be corrected throughout.
  2. Page 17, first paragraph. Should read that Mr. Fitzmaurice seconded the motion.
  3. Page 17, third paragraph. The motion was voted “No” by all; not “Aye”.
  4. Page 17, last paragraph. 7945 should be .7945.

Mr. Simon moved to approve the minutes of the March 28, 2006 meeting as changed. Ms. Hausch seconded the motion.

Six voted “Aye”.  
Mr. Adams and Ms. Pesec abstained.

### **FINANCES**

Mr. Adams moved to accept the financial report as submitted. Mr. Simon seconded the motion.

All voted “Aye”.

### **PUBLIC COMMENT**

There was no public comment.

### **LEGAL REPORT**

Ms. Patricia Nocero, Assistant Prosecutor, stated that Mr. Condon had given a report on the Eye-Will development last month and there was nothing further to report.

## DIRECTOR'S REPORT

Mr. Webster stated that a proposal had been submitted by the staff to the Village of Grand River to do its comprehensive plan and we are waiting to hear back. We are also waiting for a response from North Perry Village and Madison Village regarding their comprehensive plans.

## ANNOUNCEMENTS

Announcement of meetings were made by Mr. Webster as follows:

- May 16, 2006 - Grand River Partners Annual Dinner at the Chalet Debonne'. Cost is \$25.00 per person or you can become a sponsor, including a tax deductible donation of \$15.00 and one meal of your choice for \$40.00.
- May 16, 2006 – Public viewing at 1:30 p.m. and a Public Hearing at 2:00 p.m. for a partial vacation of Breezewood Drive in the Commissioners' Chambers.
- May 17, 2006 – Chagrin River Watershed Partners, Inc. and Geauga County Soil and Water workshop on Implementing Riparian & Wetland Setbacks at 8:30 a.m. to 4:00 p.m. at the Holden Arboretum in Kirtland for \$50.00 for non-members.
- May 18, 2006 - Lake Erie Group – Planning Commission offices, 8-9:30.
- May 18, 2006 – Painesville City Office of Economic Development, Business Networking Breakfast from 8:00 to 9:30 a.m. for \$8.00 at the Lake Erie College, Holden Center.
- June 16, 2006 – Lake, Geauga, Ashtabula Planning and Zoning Workshop 2006, at the Auburn Career Center in Concord Twp. sponsored by OSU and Lake, Geauga and Ashtabula County Planning Commissions for \$30.00 from 8:15 a.m. to 3:30 p.m.

## SUBDIVISION REVIEW

Leroy Township – Eagle Creek Subdivision No. 1, Final Plat and Improvement Plans, 19 Lots, 54

Mr. Boyd introduced the Eagle Creek Subdivision (formerly D'Amico Development) as being located in Leroy Township off Girdled Road. D'Amico Bruening Development LLC is the applicant and Polaris Engineering & Surveying is the engineer/surveyor. They had submitted a final plat for approval and requested it to be tabled because they did not have approvals from the Health Department regarding septic systems.

Mr. Siegel moved to accept the request to table the Eagle Creek Subdivision final plat and improvement plans. Mr. Simon seconded the motion.

All voted "Aye".

Perry Township – Azalea Ridge Subdivision, Variance to Article I, Section 4(B)

The Loreto Development Perry Company requested a variance of Article I, Section 4B for preliminary clearing and grading but chose to withdraw the request because the subdivision was set to be heard by the Board of Lake County Commissioners this Thursday and it would only save a day or so.

Mr. Siegel moved to accept the withdrawal of the variance request to Article I, Section 4(B) for the Azalea Ridge Subdivision in Perry Township. Mr. Simon seconded the motion.

All voted "Aye".

## LAND USE AND ZONING

### Concord Township - Proposed District Amendment, 0.7998 of Acre from R-1, Residential to B-1, Business, Parcel #10A-285-33

The Board had heard this case originally in October 2005. The applicant, Brian Morris, has resubmitted his request to change the zoning on this .7998 acre parcel off Old Johnnycake in Concord Township with water and sewer from R-1, Residential, to B-1, Restricted Business, for a future chiropractic office. The property to the north is zoned B-1, Business, the property to the south is R-1, Residential, across Old Johnnycake is R-3, Multi-family, and single-family units in Chairman's Court. The B-1 classification is somewhat broad in Concord and allows more than 80 uses. Staff strongly advised Concord Township to develop some type of professional office district for low-impact type commercial/business/office uses.

Another concern that came up in October was commercial creep, the parcel-by- parcel eventual rezoning. The staff recommended that the Township not allow the creep to go any further than the adjacent parcel to the east. There is a 50-foot buffer requirement between residential and commercial. There is about 75 feet to the rear of the existing building. This occupation would not be allowed under R-1.

The staff and Land Use and Zoning Committee recommended this zoning change.

The Chairman opened the meeting to the public.

Mr. Kevin Rhomberg, 9692 Executive Court, was the appointed spokesman for the neighborhood involved in the rezoning request. Handouts were given to the members including a two-page outline, signatures, a letter opposing this rezoning, and pictures of the area and the building. The house on the property to be rezoned has only been vacant since it was purchased in July, 2005. He stated the previous owners left because business was creeping up. Other statements made were as follows:

- Concern for side clearance if zoning went through and the house was replaced was voiced. A 50-foot buffer would be required.
- Business creeping. He thought it should be stopped right here. There was no way to ensure that creeping would stop further down the road if this was approved. He believed there was already enough commercial land in Concord. Commercial would be in their backyards.
- This change went against the 1995 and 2004 Comprehensive Plan.
- This change could not be compared to Dr. Albright's (the Dentist) change because that property already had some existing commercial zoning and was partially in Mentor.
- Safety and increased traffic. The chiropractic office would account for up to 14 additional cars per day in an already congested area. In 2004, there were 24 accidents on Old Johnnycake alone, not including those at the Mentor intersection.

- The neighbor next door to the parcel in question is no longer against this rezoning because he found out his property value would go up if it occurred.
- We knew it was residential when we bought; Mr. Morris knew it was residential when he bought his property.
- He had heard that the front of the yard would not be changed if the zoning changed, but a 25 year old oak tree would have to be taken down if he rebuilt and there would be a parking lot.

Additional points made by other concerned citizens were:

- Concerned about the side clearance if the zoning passed another building put up in its place. Mr. Boyd stated a 50-foot buffer would be required.
- Residential zoning was key to several citizens purchasing current residences.
- The vacant property behind the land in question has been purchased and the owner had been living in it for 4 ½ months.
- Concerned about home value decreasing and length of time for re-sale.
- Noise and odor pollution is also an issue with businesses.
- Buffering enforcement.
- Borlin Florist Shop property may become available for commercial businesses shortly.

Mr. Brotzman said that Mr. Rhomberg had brought up a number of points and he asked Mr. Webster to address them for the sake of clarity.

Mr. Webster complied stating several items had to be considered concerning a point to be able to stop commercial creeping. If this were to go to court, there would be a good chance the courts would go along with the change. It has been his experience that a community has to handle the traffic when a change in zoning is made. If the traffic is the only concern, it is a weak point at best. While we desire to maintain good property values, with proper buffering and necessary requirements, most, if not all, property values would be protected. A green screen would have to be evergreen trees, not grass. If and when this is approved, they will be told they must comply with all the zoning requirements.

Ms. Pesec felt Concord Township's zoning is very weak on buffering requirements.

Mr. Webster stated that the staff looked at this from a purely technical standpoint. The aspects of traffic and property values would be best taken to the Township. From a technical standpoint, the extension of the commercial zone would be practical. The staff recommends this change and preparing some kind of professional office complex regulation as opposed to a B-1 or a B-2 would help to ensure compatibility to the surrounding uses. Some uses are not a problem because the size of the lot would preclude them.

Mr. Siegel said he would be upset if he had bought a house there seeing this property as residential and it was changed to commercial. He commented that the Township would not benefit financially from this change at all. He did not think creeping business down the residential district made any sense when there was a lot of commercial land around the corner on Rt. 20 in Mentor.

Ms. Hausch mentioned that the staff's paperwork stated that the 2004 Comprehensive Plan did not really address this section of the Township. She informed the homeowners from Concord that they should talk to the Township Trustees and have them make its Plan a little more stringent.

Ms. Pesec said that the Plan does address it as residential on the map. Originally when this rezoning was addressed, it looked as though it would be able to have a natural stop, but after looking at the pictures showing where commercial and residential stopped, she felt it should stay residential.

Mr. Siegel moved to recommend approval of the district change from R-1 to B-1 on parcel #10A-285-33 in Concord Township and Mr. Simon seconded it.

Mr. Webster took a roll call on the motion as follows:

Mr. Adams – No.	Mr. Siegel – No.
Mr. Franz – No.	Mr. Simon – No.
Ms. Hausch – No.	Mr. Sines – No.
Ms. Pesec – No.	Mr. Brozman – No.

Mr. Brozman stated the rezoning issue will not be recommended to be approved.

Leroy Township – Proposed Text Changes to Section 2, Definitions, Section 3, Districts, Section 9, Prohibited Uses, Section 14, Conditional Use Permits, Section 15, Residential, and Section 17, B-1, Business

*Section 2, Definitions*

Mr. Boyd said the next case is Leroy Township's text amendments. There have been some issues with collector vehicles and junk vehicles. Definitions have been written that are a little more specific in differentiating between junk and collector vehicles.

Proposed changes to the definition of Minimum Lot Area are being made to stop allowing the use of half the right-of-way towards the minimum lot area calculation if the right-of-way is not owned by that property owner. It conflicts with Section 15, which is the R zone minimum lot size.

*Section 3, Districts*

They are adding a special interchange district, which shall be designated as "B-2" district. This is a housekeeping issue that was overlooked a few years ago when Leroy created the district. Section 3 lists the zones that exist in the Township.

*Section 9, Prohibited Uses*

The text amendment to 9.12 states, “Junk motor vehicles of any type and unlicensed collector’s vehicles, stored, collected, or accumulated, for a period of more than thirty (30) days, unless enclosed in a building or garage.”

*Section 14.26 – Conditional Use Permit for Adult Oriented Business*

They added the 1,000-foot buffer to include child day care facilities. This is the same change that was recommended to Painesville Township when they added child day care facilities to their B-3 District.

*Section 17.01 – Permitted Uses in Business, B-1 District*

They essentially are adding duplex dwellings into the B-1 District. This is another housekeeping issue.

“Any use permitted in an R district shall be permitted in a B district except single or two family/duplex dwellings for residence purpose and buildings accessory thereto.”

Mr. Boyd stated the Land Use and Zoning Committee recommended approval of all the text changes as submitted by Leroy Township.

Mr. Simon moved to recommend that Leroy Township accept the text changes as submitted. Mr. Siegel seconded the motion.

All voted “Aye”.

Painesville Township – Proposed Text Change, Creation of Section XXXIL, Mixed-Use PUD

The first submission concerned the fact that no text in Lake County allowed for the type of development that Hemisphere/Lakeview Bluffs planned to do. The first step at the Painesville Township level was to create a zoning classification to allow the wider range of uses that this mixed-use development will eventually have. Painesville Township’s zoning inspector and administrator as well as Hemisphere’s legal counsel, who was present, have been working together and submitted the Mixed-Use PUD (MUPUD) district. This district can be used anywhere in the Township. Departing from everything this Board is used to, it would include small scale retail as well as living on the lake, hotel, golf, sports training, etc. that would not work with the current codes. This zone was modeled after the existing PUD zone used for Lake Erie Shores off Bacon and Lake Roads. The highlights of the MUPUD were:

- The minimum development site is 400 acres.
- The actual re-zoning is more than 500 acres.
- 250 feet of road frontage. In this case it will be on Fairport Nursery Road.
- 500 linear feet of frontage along the lake and/or a river.
- Permitted uses range from the hotel to sports recreation, perpetual offices, restaurants, marinas, etc. All uses listed on the application would be permitted.
- Density is now six units per acre. The initial talks started at 10.
- 20% open space. They should be well above this percentage by completion.
- The setbacks are flexible to accommodate the mixed uses and environment ranging from zero side yards to 50-foot front setbacks and so forth.

Mr. Boyd said all this would be approved at the Township level. Mr. Cole, Hemisphere's legal counsel, has already started to address some of the edits the staff suggested such as churches not being a permitted use to date and they might want to add this in as a conditional use to avoid potential litigation, and there was some grammar that, in some cases, was a little too specific.

Land Use and Zoning recommended the approval of this new MUPUD to Painesville Township.

Mr. Simon asked if there were any other parcels that would meet the criteria for this as it is presently configured and Mr. Boyd stated probably not. The linear footage of a tributary would probably prohibit this. Land south of Ridgecrest Drive might come close to the footage along the Grand River by the Painesville Country Club, but the 400-foot road frontage is questionable.

Ms. Pesec wanted to know the calculation used to come up with six units per acre. Mr. Boyd stated that the conceptual master plan showed pods with a set of density figures attached to it and a number of units per pod. Ms. Nocero clarified that if there is 400 acres and it is six units per acre, they can get 2,400 homes if the site permits. She continued stating this development was going to be cluster homes and multi-level. It was determined that it is a Township call on the percentage of open space. Simply because of the make up of the property, open space will probably be about 30-40%. Ms. Pesec stated that she had never seen this occur before and she was told it would be here because of the contamination. All Ohio Environmental Protection Agency (O.E.P.A.) guidelines are being followed.

Mr. Boyd deferred to Ms. Pesec that she brought up a good point on the six units per acre calculation and it could be cleaned up a little bit. She felt this was significant.

Mr. Boyd said there were two steps: 1) The code itself; creating the mixed-use land use development, and 2) the re-zoning process.

Mr. Adams attempted to clarify the situation by stating the zoning boards of the various entities will be involved, along with the Lake County Soil & Water Conservation District, the County Engineer and the Sanitary Engineer's Department. As a lifelong resident in this area, his father and uncle worked at Diamond. Mr. Adams was a practicing chemist and he believes that you can clean things up and neutralize things. He felt that all these other entities will be looking to protect the lakefront property for us. It concerned him that he did not see anywhere that the E.P.A. will be there when dirt is moved and trenching is done for sewers and thought this should be required. Right now it is benign, but when they start disturbing things, it is questionable as to what will be exposed under the surface.

Mr. Boyd introduced Mr. Cole as the legal counsel, who helped along with Mr. Cannon, to create the code.

Mr. Cole stated that this is required by the Ohio Revised Code. Not one building will be built and not one excavation will be made without the approval of the O.E.P.A. That is a requirement by the designation of this site. It was not put in the Township code because it is required in the Ohio Revised Code.

The Ohio Revised Code portion pertaining to the O.E.P.A.'s presence at the Hemisphere excavation site can be found in Chapter 3746, which authorizes the Ohio E.P.A. to adopt regulations for brownfield sites.

Mr. Lee Bodnar, Painesville Township Administrator and resident of 260 Copperfield Court, Painesville Township explained this is just the approval of the zoning text, not the re-zoning at this point. The site is unique. Concerns are valid about safety and O.E.P.A. has been involved in this. They set up a remedial action plan before it even comes to the point of anyone moving any dirt or any digging occurs. Improvements on that property can move forward, but they have to meet the requirements of O.E.P.A. The community is very aware of that and has enjoyed a great relationship with the developer and O.E.P.A. The likes of this has never been done in Lake County, Ohio or in the United States.

Ms. Hausch asked if this had been approved by the Township Zoning Commission and Mr. Boyd affirmed this. He said they had set a public hearing with a 30-day time window in which it was received and reviewed. A couple different versions were reviewed with the Zoning Inspector, Mr. Bodnar and legal counsel involved. Our recommendation will go back to the Zoning Commission for a meeting in early May. The Zoning Commission will then vote on it and it will then go to the Trustees for the ultimate creation of the zone. If there are changes that this Body would like, Mr. Boyd said he would forward them to the Zoning Commission as part of the staff's correspondence.

Mr. Sines inquired of Mr. Bodnar if Painesville City and Fairport Harbor Village had seen this text and were looking to do the same thing.

Mr. Randall A. Cole, Attorney at Jones Day, spoke about this project as being a three-prong project, with the lion's share of development being done in Painesville Township. The initial development will also be in Painesville Township, which has been set up as a model for the other communities with a smaller "investment in the project" to mirror. Mr. Sines also asked if they had spoken to the City of Painesville and was told the original draft was mirrored in a proposed draft to Painesville City. They are not as far along with them. The changes that have been made at the request of the Township and as a result of a request by your staff are not yet reflected in the Painesville City draft. Hopefully, they will be very close to Painesville Township's when they have finished with the detailed discussions with the City.

Mr. Sines wanted to know if there was a similar development anywhere in the State and Mr. Cole answered in the affirmative.

Mr. Cole said they drew, for a large extent, from the mixed-use development draft that was eventually approved in Westlake that gave birth to Crocker Park and, of course, that is based on several life style communities in Florida.



Mr. Simon said they are working with two other jurisdictions that are incorporated areas. Mr. Cole believed this was the first time this has been done in this manner. There is only a very small area in Fairport Harbor that is comparable to a mixed planned use development.

Mr. Brotzman questioned why three Land Use and Zoning Committee members had voted no and Mr. Boyd stated that their concerns were all environmental.

Mr. Webster commented on the fact that this particular project has received two grants from Ohio funds of \$3 million each to re-clean this brown site and the County has kicked in the matching funds. Mr. Davis of Hemisphere helped or wrote the Federal brownfield cleanup laws, as he understood it. The entire site has been cleaned up with the exception of a small part which is in the process of being cleaned up right now. It will have to meet O.E.P.A.'s regulations before they will release it. They have a pretty stringent set of requirements. Because Diamond did not leave any paperwork on what and where things were buried, it was necessary to have core borings done to determine what is buried on the site. This never became a superfund site.

Mr. Sines said there were 1100 acres of land and the concentration of the efforts have been on the hot zones.

Mr. Brotzman stated, if he understood the conversation correctly, any and all portions of this site could have been developed if so chosen.

Mr. Scharver of the Lake County Soil & Water Conservation District said that is the reason why there is a golf course and other areas where they would not be building residences.

Mr. Boyd commented that the Planning Commission will have the same authority as far as reviewing as they have in reviewing other subdivisions, along with any variance requests. Mr. Brotzman felt that when the Commission starts seeing these plans, we will need to see some new inputs as well. He was told the O.E.P.A. will submit their comments along with other regulatory agencies who will state their recommendations.

Mr. Simon had some concern on the considerable inexperience involved. He thought Painesville Township, in their conventional PUD, had the ability to hire consultants to give them assistance. Mr. Bodnar agreed. Mr. Simon said the Township did not have the expertise to review anything of this nature in his eyes because of the uniqueness of the property and suggested that they may want to hire help with this project.

Ms. Pesec said the Commission's ability in terms of the environmental impact is minimal and, in addition, she was concerned about the need for Subdivision Regulation revisions because there did not have anything in the current zoning text or Subdivision Regulations that included a MUPUD that is this extensive. Mr. Sines said there is an Ohio Revised Code for that. Ms. Nocero said the Commission can only do what they are authorized to do. They cannot draft regulations that exceed the enabling statutes.

Ms. Pesec thought they could look for health and safety within the County Regulations as the Planning Commission. Mr. Webster referred to counsel for this question. Ms. Nocero felt this would be going over the Commission's authority. She felt 711.10 or 711.101 gives the Board their authority and is pretty specific about what they can do.

Mr. Bodnar and Mr. Boyd had talked at length about needing to know what everyone is doing simultaneously when all the other public entities get involved so the pieces can be put together. In planning, we review what we have always reviewed, we let Mr. Scharver do the Soil and Water review and we let the O.E.P.A. do what they do so long as we get the proper correspondence and notice and then we can distribute it.

Mr. Webster stated that from what he has seen so far, it looks like only variances will be required. Until we see an actual layout, it is going to be very difficult to make any determinations on this. Quail Hollow was given something like 16 variances at one time. They all dealt with block lengths and cul-de-sac lengths, etc. to basically fit the layouts. They had the grounds and reasons for these variances that were unique to that area. They had to do with topography and design, which meets our requirements for a variance. We could do some of those things here.

Ms. Nocero added that legislation for one item is never a good idea. You are better off with the variance process than you are to tailor-make a set of regulations for a project that there is only one of. The variance procedure is going to give you and the Township more flexibility. She thought the Commission would be able to look at each scenario differently that way. You are not tied to these regulations.

Mr. Scharver was asked for his comments on the environmental issues by Ms. Hausch. He stated the only comment he has on the environmental concerns was that there are definitely some serious issues there and they are being dealt with as such by the proper agencies.

Mr. Brotzman had a concern in the Land Use and Zoning minutes on Page L-52. The Committee added a comment that this project should not come at a price of someone's health or the financial well being of the citizens of Lake County. They were concerned that something unforeseen would create a financial burden on the citizens while making a contractor wealthy. They also felt that all health risks should be minimized prior to this project being started. Do we wish to include this as a comment in the motion, is it appropriate and how could it be incorporated into the motion?

Mr. Webster said you could enter it as a comment if the Commission liked, but instructed that it should not be a stipulation.

Mr. Simon referred to counsel on whether this would be appropriate on a zoning classification. Ms. Nocero thought this would be inappropriate. The comment is noted in the discussion here tonight and the point has been made with the Township. She did not believe it belongs in the motion.

Mr. Simon moved to recommend approval of the Mixed-Use Planned Unit Development text amendment for Painesville Township. Mr. Siegel seconded the motion.

All voted "Aye".

Painesville Township – Proposed District Amendment of 524.4 Acres from I-2, Heavy Industry to Mixed-Use PUD

Mr. Boyd stated that this was the re-zoning requested by the applicant, Tierra Solution, Inc., for the proposed Lakeview Bluffs development in Painesville Township. They proposed a district amendment of 524.4 acres from I-2, Heavy Industry, to Mixed Use Planned Unit Development (MUPUD). There are sixteen parcels involved in the applicant's zoning request: 12A-053-0-00-001-0, -003-0, -004-0, -005-0, -006-0 and -007-0; 12A-054-0-00-001-0 and -002-0; and 12A-059-0-00-001-0, -010, -011-0, -012-0, -014-0, 023-0, 024-0, and -027-0. Surrounding usages in the area include some residential in Fairport Harbor Village, light manufacturing exists in the east, and a tremendous amount of vacant property. This is the first submittal of the project. The Township is currently updating their 1996 Comprehensive Plan.

Mr. Boyd showed, via PowerPoint, the Painesville Township zoning map and a 2004 air photo of the site. He pointed out the heavy industry that exists right on the water. Lake Erie Shores was formerly zoned heavy industry when Mr. DiSanto began his development. We went through the same procedure with this particular 150 or 160 acres a few years ago setting a pattern for this re-zoning.

Mr. Bodnar informed the Board that the Trustees will be addressing the updated Comprehensive Plan at their May 16, 2006 meeting.

The staff has been working with the Township staff and the applicant on the zoning specific issues of which we just talked about with this Board. The appropriate environmental entities are involved. The 1996 Comprehensive Plan does indicate the industrial designation for this site. There is a national trend to divert these heavy industry non-dependent water use sites away from the water. This is clearly established in the current draft comprehensive plan. This is a unique situation with no model to follow, but it is definitely a better land use than what is there now. Painesville Township staff has expressed a unified support of this project.

Mr. Bodnar stated, in the O.E.P.A.'s process, they take this entire site and break it down into smaller sites that are more manageable called operating unit sites. They then monitor each one of those, a remedial action plan is put together and then it is addressed. Part of the reason this would remain as industrial zoning was that there were no remedial action plans to bring anything above that. With those plans in place, submitted through Hemisphere, and also approved by the O.E.P.A., they will then take each operational unit and release it at a public hearing, in phases, so everyone will know when those particular units are released from their board.

Ms. Pesec asked where the spots requiring the most significant cleanup were located. Mr. Cole stated that he was sure that someone could come in at a different time and show her all

those things. He could not show it on the maps at the meeting because they did not have enough detail. She said she would appreciate this being done.

Both staff and the Land Use and Zoning Committee recommended approval of this district change.

Mr. Adams moved to recommend the re-zoning from I-2, Heavy Industry to Mixed Use PUD when the MUPUD zoning is created by Painesville Township. Mr. Simon seconded the motion.

Mr. Simon inquired if it would be necessary to come back to this body if the Township modified the zoning and was informed that it would not be necessary. Ms. Nocero reminded everyone that this was just a recommending body.

All voted "Aye".

After a short ten minute break, the meeting reconvened.

Perry Township – Proposed Text Changes to 216, Site Plan Review, 307, PUD Districts, 310.02, Multi-Family, 301, Residential, 302 Estates Residential 1, 303 Estates Residential 2, 304, Estates Residential 3, 306, Lakeshore Residential, 311, B-2 Business, 315, I-1, 316, I-2, and 317, I-3. Adding Sections 405, Riparian Setbacks, Section 407, Water Quality and Erosion and Sedimentation Control Regulations and Definitions of Riparian Area and Riparian Setback.

The last case for review is text amendments for Perry Township. There are 19 submittals:

*Section 216, Site Plan Review and Section 307, PUD District (Planned Unit Development)*

The Township wants to add parameters to Section 216, Site Plan and Section 307, PUD erosion and sediment control as one variable based on Section 407, which is proposed for tonight's meeting as well, and a section for water quality parameters. Staff thought the Township may already be covered under the specifications of the E.S.C. regulations that are currently in place at the Lake County Soil and Water Conservation District's office that were adopted by the County Commissioners a few years back. If so, that might be a duplication of efforts. Water quality may be different.

The staff and the Land Use and Zoning Committee recommended approval of the submissions as long as there are no duplications or any conflict of services via what the Lake County Soil & Water Conservation District already does.

*Section 310.02, Multi-Family Projects*

The Township wants to add the erosion and sedimentation control and water quality standards to multi-family projects also.

Mr. Boyd said he believed these were in response to Phase II stormwater requirements for Ohio E.P.A. Mr. Siegel confirmed this fact.

*Section 407, Water Quality and Erosion and Sedimentation Control*

Mr. Boyd said this was the new water quality and erosion and sedimentation control language. Essentially, this is the general permit language pulled from the O.E.P.A.'s office of the core services that have to be done in Phase II.

The Chagrin River Watershed Partners were contacted because they deal directly with this. This is to go into the zoning code, which we have not seen in our five townships yet. The Township may need to appoint a person to enforce these water quality standards and we need to know who that would be.

Mr. Siegel stated that they were talking about making an agreement with Soil and Water so the duplication would be taken away. The Township did not intend to do this themselves. He will be involved in finalizing these items.

Ms. Nocero made a statement to Mr. Siegel to see if his law director thought this fits under health and safety and Mr. Siegel agreed. He also agreed that it would be okay under Chapter 519.12. Mr. Boyd stated that there may be an Attorney General's Opinion that says this would work. Geauga County is doing it and we have their model regulations. A lot of this is pulled from Geauga County. It is legitimate, but we have not seen it outside of the Stormwater Management Department. Ms. Nocero stated that they had expanded a little bit on the definition of zoning and she just wanted to make sure that someone from the Stormwater Management Department had reviewed it. Mr. Siegel said he would double check it with Mr. Gills tomorrow. He knew that Jack McClay had been on top of this.

Ms. Pesec showed concern that the Township was going to work with the Lake County Soil & Water Conservation District to help enforce that, but the other townships in the County are paying so that they have expertise and the Perry group does not pay but adds an additional burden to the Lake County Soil & Water Conservation District for free. Mr. Siegel said the Township is working out an agreement with them. Mr. Scharver said that Soil & Water did this anyway. That is their job and they are paid by the County and the State equally. It is part of their reimbursement to do that. It is not part of Stormwater. These are separate issues.

Ms. Dreyfuss-Wells had pointed out to Mr. Boyd that there was nothing addressed on water quantity. Water quality is obviously affected by the water quantity on the development site.

The staff and Land Use and Zoning Committee recommended approval with the modifications mentioned.

*Amend Sections 301, Residential; 302, Estate Residential 1 (ER-1); 303, Estate Residential 2 (ER-2); 304, Estate Residential 3 (ER-3); 306, Lakeshore Residential District; 307 PUD District (Planned Unit Development); 310, B District (Business and Commercial); 310.02 Multi-Family Projects; 310.04, Health Care Facilities; 311, B-2 District (Business and Commercial); 315I-1*

*District (Light Industry); 316 I-1 District (Heavy Industry); and 317 I-3 District (Heavy Industry)*

Mr. Boyd stated that Perry Township is amending the above codes where they are going to implement riparian setbacks with the sentence “Riparian setbacks shall be required pursuant to Section 405, Riparian Setbacks.

The staff and the Land Use and Zoning Committee recommended approval.

*Add Section 405, Riparian Setbacks*

The actual Riparian Setbacks regulations in Section 405 work with the directives from Geauga County. The merits are fine, but he felt they should be localized to the Township’s needs and current zoning ordinances; i.e., permitted uses within a riparian setback without a zoning certificate. Recreational areas did not need a zoning certificate anyway. The staff felt they could help the Township localize this code a little bit.

Repairs, maintenance or expansion were not addressed in the change where existing buildings that are lawfully pre-existing would be grandfathered in a riparian setback. Also, there are some definitions that should be added to the existing text.

A major concern the staff had was that the setbacks are only to be placed, according to this proposal, on Red Creek, Red Mill Run, Arcola and the Grand River. The staff recommends not using the names of streams. All waterways with a defined bank and bed should be taken under consideration on a case-by-case basis.

Ms. Pesec thought this was defined pretty well in the County Riparian Setbacks. Mr. Boyd said that waterways, etc. needed to be added into Perry’s definition section. Ms. Pesec felt the Township could just look at the Lake County Subdivision Regulations as a model in order to be in harmony with them. If there is a way to be more consistent, they should look into it.

The Township is measuring from the center of the streams and should not because the centerline is always changing. They should measure from the ordinary high water mark or the edge of the floodway.

The staff suggested the Township create a riparian setback map. The Planning Commission staff could help with that.

The staff and Land Use and Zoning Committee recommended approval with the stipulations mention above. The staff will assist in future revisions if needed.

Mr. Scharver had a few points of clarification he wanted to address. Concerning the erosion and sediment control point, the County Commissioners adopted that regulation. The Soil & Water District is administrator of that regulation as their agent. The Commissioners control that. The Lake County Soil & Water Conservation District does all the townships. It is not that Perry Township would get a free service that the other townships would not get. Ms. Pesec said she did not understand why that was in the text then. Mr. Boyd explained it was pulled from the Geauga County model as essentially the whole submittal was.

As far as the riparian setback issue, Mr. Scharver thought it was great. He did suggest the Township might want to mirror the County Subdivision Regulations so there is a consistency in terms of how the setbacks are formulated in terms of watershed size and ordinary high water mark instead of the centerline. This would help so there would not be any misconceptions between the County and the Township.

Ms. Nocero thought Mr. Siegel said this was being developed and instead of doing a stormwater MS4 filing, they were adopting these erosion sediment controls. Instead of doing a stormwater program per se, they were doing it through the zoning. Mr. Siegel replied that this was part of their stormwater plan that they had to add this to their zoning. In terms of the erosion sediment control plan, the Township may be able to show the State that there is already a County program that covers this. They may be able to leave that portion out if it is not needed. The water quality management is something that the Township will probably have to do.

Ms. Pesec moved to recommend approval of the Perry Township text amendments based on the Land Use and Zoning Committee's recommendation. Ms. Hausch seconded the motion.

Seven voted "Aye".

Mr. Siegel abstained.

Mr. Brotzman was concerned that the Subdivision Regulations on riparian setbacks might need to be updated to include what would happen when a waterway that has been tiled might be subject to riparian setbacks during times when water from an undersized or broken tile flooded and inundated an area.

Mr. Scharver stated that, if there is not a defined channel, the regulatory agency (U.S. Corps of Engineers or the Ohio E.P.A) can see and define a bed and bank. It does not matter if there is water flowing in it all year around, part of the year or never. If there is a defined bed and bank, a high water mark can be used and it would be subject to a riparian setback.

If it is tiled and it becomes inundated or the tile breaks, then that would be outside of the definition of a riparian setback. On those issues, with all the agriculture that is in that part of the County, there may be some judgment calls by a regulatory agency on whether or not it is a stream and would be subject to riparian setbacks. Once the regulatory agencies determine whether there is a stream or not, it would be up to the County to say whether the riparian setbacks apply or do not apply. In the particular case Mr. Brotzman referred to (Chad Pengal's project on Townline Road), it was determined it was not a stream; however, the Corps made a special condition there because of the amount of the flow that was carried through whether there was a tile or not. They wanted to keep the connectivity between one well and another. This scenario will probably be coming into play more often now that we are moving further east in terms of development.

## REPORTS OF SPECIAL COMMITTEES

### Lake County Coastal Plan Committee

Mr. Boyd reported that the Lake County Coastal Plan Committee had finished with the Kent State Urban Design Center in finalizing their report. Mr. Harry Allen, Jr., Chairman and Mr. Boyd had the privilege of meeting with Dr. Beverage at Lakeland last week about spreading the message of the importance of the lakefront. They are trying to work on a documentary to be about an eight to 15 minute film that Lakeland is going to produce for the Committee by using the images from the Coastal Plan, and getting stakeholders, and public officials to talk about embracing the lake. The first phase would be to educate non-lakefront communities on what the lakefront can do for them by showing economic benefits. In the second or latter stages, depending on their video ability and timing, they will start focusing on each community and their waterfront assets.

When asked if Mentor had signed onto the plan, Mr. Boyd stated that they were represented on the Committee and attended the meetings. We would like to figure out a way to possibly have Mentor hold a key luncheon with prominent businessmen, elected officials and whoever is interested. Mr. Allen is close to having a key note speaker lined up who would attract a lot of people to hear the message of the lakefront. Mr. Boyd is trying to get a host for this. He felt they were close to getting the ear of some of the private businessmen in the County.

Mr. Siegel offered the Perry Township community center if they wanted to do it on the lake. It holds 400 people.

## CORRESPONDENCE

There was no correspondence.

## OLD BUSINESS

### Lake County Subdivision Regulations Changes

Mr. Webster brought up the Lake County Subdivision Regulation changes. There was a Public Hearing on April 25, 2006 and this was presented at the last meeting. He wanted to discuss some things and study what was done. He had received a call from Mr. Martin today concerning some of the revisions that were of considerable concern to the Builder's Association.

Mr. Martin of the Builder's Association said it came to his attention that there were a couple of text changes that were proposed for the Subdivision Regulations that are on the agenda to be voted upon today. He had spoken to a couple of people that dealt with these regulations and they were specifically concerned with the requirements for the preliminary plan that were changed. There were four things: pre-applications being required, bridge details, open space requirements and the affirmed delineation of wetlands. They would like to have some time with a group of people who handle this on the regulatory side and a group on the private side get together to identify the problems that brought about this request and what might be done to come up with a better, more workable solution. Affirmed delineation is difficult to get and takes about 13 months now. He has had people waiting many years for these. He thought the preliminary plan and the delineation could be done in tandem rather than waiting for a longer period or indefinite period of time for an affirmation.



Mr. Martin was here to ask the Commission to table accepting the Subdivision Regulation changes and give them a month to get together with Soil & Water and the Planning staff/commission to, hopefully, work something out fairly quickly.

Mr. Simon commented that there was some terminology that was added to the Subdivision Regulation changes like “affirmed delineation”. It was never his intention to rewrite the Regulations to add any preliminary process that would take a year and a half to obtain. This was never the intention of the Board. The Commission never realized that this change would make the process that cumbersome. He did not think it was out of line to ask for a request for time to work this out when this specific terminology adds such lengthy research and engineering to the process.

Mr. Webster said that these changes were made in response to some of the comments attained at the public hearing by other agencies. Because of the difference between the jurisdictional standpoints vs. the layman’s interpretation of the affirmed delineation process, there is reason to take some more time to obtain information and clear up any concerns that exist.

Mr. Simon moved to take the time to see exactly what the Commission is dealing with from a timing standpoint. Mr. Siegel seconded the motion.

All voted “Aye”.

Ms. Pesec suggested setting up a subcommittee, being as the previous subcommittee was set up only to look at the original tract definition, to work with the Subdivision Regulations changes, especially the affirmed delineation portion. Staff should be a part of this subcommittee and she thought Mr. Martin would also want to be there.

Ms. Pesec moved to form a subcommittee to review affirmed delineation and the changes proposed for the Subdivision Regulations. Ms. Hausch seconded the motion.

All voted “Aye”.

The Subdivision Regulations Revisions Review Committee members will consist of Ms. Pesec, Mr. Martin, an engineer involved, Mr. Siegel, Mr. Simon, Ms. Hausch and staff members.

#### ADJOURNMENT

Mr. Simon moved to adjourn the April 25, 2006 meeting at 9:50 p.m. and Ms. Hausch seconded the motion.

All voted “Aye”.

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Timothy C. Brotzman, Chairman

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Darrell C. Webster, Director/Secretary